



Waitangi Tribunal

TE MANUTUKUTUKU

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Haratua 2004

59

May 2004

Tribunal Report on the foreshore and seabed

After the introduction of the Crown's foreshore and seabed policy in August 2003, claimant groups from all around the country requested an urgent hearing on whether the policy was consistent with the Crown's Treaty obligations. The Crown did not oppose the application, and urgency was granted in September 2003.

The foreshore and seabed inquiry involved 183 claims, heard at Wellington's Westpac Trust Stadium over six days in late January 2004. The Tribunal members were Judge Carrie Wainwright (presiding), Joanne Morris and John Clarke (Ngāti Porou, Ngāpuhi).

The Tribunal's Report on the foreshore and seabed policy was delivered four weeks after the hearings. The Tribunal found that the policy breaches both Article 2 and Article 3 of the Treaty of Waitangi in fundamental and serious ways. It also found that there is probably more agreement between the Crown and Māori on some of the key components of the foreshore and seabed debate than both sides realise, and recommended that the government revisit its policy.

The Tribunal found the policy breached Article 2 in both an historical and a modern context. Its Report stated that, historically, the Crown did not protect Māori tino rangatiratanga, or even the more limited English concept of ownership, of the foreshore and seabed. Instead, the Crown actively assumed ownership of the foreshore and seabed for itself, without the consent of the Māori right-holders, and without compensation. Today, the

Crown wishes to restore that situation of effective Crown ownership, which had been challenged by the Court of Appeal. The Tribunal found that there is no overwhelming need for the Crown to do this in the national interest, or to set aside Treaty protections. It considered that, at the very least, the Crown must compensate those who will lose property rights.



Mark Prebble, then Chief Executive of the Department of the Prime Minister and Cabinet, giving evidence before inquiry members Judge Carrie Wainwright and John Clarke

Photo courtesy Dominion Post

The Tribunal also found that the Crown's policy breached Article 3 of the Treaty of Waitangi by failing to honour the guarantee that Māori are entitled to equal treatment under the law. It said that their ability to have their legal rights defined by the courts is being taken away, and their property rights are being

continued on page 3

Editorial

The choice of a new process for hearing claims
Dr Grant Phillipson
Chief Historian

2

Te reo Māori at Tribunal hearings

3

Tribunal inquiries in progress

4

Ngā kānohi hōu – new Tribunal members and officers

6

Northern South Island Inquiry concludes hearings

8





Editorial

The choice of a new process for hearing claims

Tēnā koutou katoa

The Tribunal is constantly seeking new ways to deliver results faster without compromising quality. It is developing a new process in the Central North Island inquiry, which will now be made available to claimants in other inquiries.

Tribes from Rotorua, Taupo, and Kaingaroa wanted a quick, fair, and transparent public process, without the full researching and hearing of all 150 of their claims. The Crown wanted a fair process that delivered claimants ready to negotiate a settlement by 2005. Together, the claimants, the Crown and the Tribunal have developed a new process to meet the aspirations of Government and the people, while remaining true to the core task of the Waitangi Tribunal. The Tribunal will still hear and report on claims, but it will do so in a way tailored to the specific needs of these tribes, and to providing quickly a solid base for starting negotiations.

The Tribunal recognises that the needs and goals of claimant communities are not the same. One process does not necessarily provide what is needed for all. From now on, claimants and the Crown will have a choice between a full inquiry and the speedier process being developed in the Central North Island. The new process offers broad-brush research on the big-picture issues. The Treaty breaches that affect most or all people in a district will be the focus of the inquiry. Raupatu, the Native Land Court, waterways and Crown purchases of land will be on the table; lots of individual blocks and individual public works takings will not. In this way, the things that really matter to most people will be all that is inquired into.

Claimant and Crown research will be carried out simultaneously, followed by a Crown statement of position on the big-picture issues. The Tribunal will then define the issues for its hearings. At this point, claimants and the Crown would be free to decide that they had enough material on which to start negotiations. Otherwise, they could proceed to have the evidence heard by the Tribunal.

Hearings will provide for claimant oral evidence and ensure that the people's voice is heard, and their grievances tested openly in a public forum. Claimant communities will identify their representatives and their relationships with each other, and explore how their claims and issues overlap. The number of hearings, limited to a small base of big-picture research, will be fewer than usual. The whole process could take as little as two years, from the start of research to the delivery of the Tribunal Report. Claimants and Crown would know each other by the end of hearings, both in terms of representatives and positions on key issues, and be ready to negotiate.

If, at the end of the day, the claimants or the Crown felt that they needed to know more about specific issues, or that they were not ready to negotiate a full settlement, they would have the option of returning to the Tribunal for a second-stage inquiry. With additional research on smaller-scale issues and particular claims, as needed, the Tribunal could then proceed to hear the claims in greater detail.

The new process will be available for those who want it. Its success depends on cooperation between Crown and claimants. They have to agree on a fast-track process, on what the big-picture issues are, on the research needed, and at what point to start negotiations. With cooperation, there will be a fast-track process that provides a fair public hearing, and testing of evidence and representation, on the issues that matter most to people. Equipped with their knowledge of each other and the issues, and with a Tribunal Report on the matters in contention, the claimants and the Crown could be ready much earlier to start negotiations for fair and durable settlements.

Grant Phillipson
Chief Historian

Te reo Māori at Tribunal hearings

History was made at the first hearing of the Urewera inquiry at Waimana in November last year. For the first time at a Waitangi Tribunal inquiry, all evidence given in the Māori language was simultaneously interpreted in English. As well, all the evidence in both languages was digitally recorded onto disc. This system of interpretation and digital recording will be used at each of the Urewera hearings over the next twelve months.

The Tuhoe people of Urewera have held firm to their te reo Māori and expected to present their evidence in Māori. Oral evidence in te reo is vital to the claims, and needs to be translated so that everyone involved can understand it. Previously, evidence was translated at natural breaks during the speaker's presentation. For Urewera, new technology will allow simultaneous translation, which will improve the pace and momentum of each hearing.

Rangi McGarvey of Tuhoe, who has the ability to interpret the Māori evidence into English as it is being presented, has been engaged to provide this enduring service to his



Above: Waiohau Marae, venue for the third Urewera hearing.



Left: Rangi McGarvey providing simultaneous interpretation of oral evidence. Photos: Rhonda Pohatu

people and to the Tribunal. At the Waimana hearings, Rangi sat in a soundproofed booth listening to the evidence and providing a real-time interpretation. Tribunal members, legal counsel, members of the public and others present were able to listen to this through headphones, and the entire body of evidence was digitally recorded.

This system will be employed at every hearing of the Urewera inquiry, including those held on marae where no reticulated power supply is available. In those cases the Tribunal will supply its own portable generator.

As with all evidence presented at Tribunal hearings (except when those giving their evidence request otherwise or the evidence is classified as confidential), after the conclusion of the hearings in April 2005, the audio CDs from the Urewera hearings may be available to researchers on a case-by-case basis. In this way the oral evidence of the people of the Urewera about their Treaty claims will be preserved for future generations. ●

Continued from page 1

abolished and replaced with a lesser form of rights, mainly the right to greater participation in coastal management. No other private property rights in the foreshore and seabed will be abolished. The Tribunal found that these proposals are in breach of Treaty principles, human rights principles, and the norms of good government.

The Tribunal's primary recommendation is that the government go back to the drawing board and engage with Māori to negotiate a

solution. Five other recommendations were made should this option not be taken up:

- letting Māori proceed through the Courts as they can now
- placing provisions on titles (if granted) to protect public access and prevent sale
- improving the Courts' range of instruments when they consider customary title
- adopting a shared guardianship model similar to that operating in Ōkahu Bay, Auckland as a result

of the Orakei settlement with Ngāti Whātua; and

- negotiating case-by-case settlements, as with lakebeds.

The report closes by stating, "Whatever happens, we hope for an outcome that is faithful to the vision of the Treaty: two peoples living together in one nation, sharing authority and resources, with fundamental respect for each other."

The published report is available from Bennetts Bookstores and the Tribunal's website: www.waitangi-tribunal.govt.nz ●

Tribunal inquiries in progress

Wairarapa ki Tararua inquiry

Hearings began in March for the Wairarapa ki Tararua inquiry district. Fiona Small, the Tribunal's lead facilitator for this inquiry, says the key issues include:

- the relationship between Crown and Māori from 1840 to 1865, especially the Crown's 'purchase' of most land in the district through means that claimants say breached the Treaty
- the relationship between Crown and Māori from 1865 to 1900, particularly the effects of title individualisation in the Native Land Court, which claimants say breached the Treaty
- resources and the environment, especially the Crown's acquisition of Lakes Wairarapa and Onoke/ Ferry in alleged breach of the Treaty

- loss of land and resources in the twentieth century, to the point where claimants and Crown now agree that the Crown failed in its active protection of Māori and breached the Treaty.

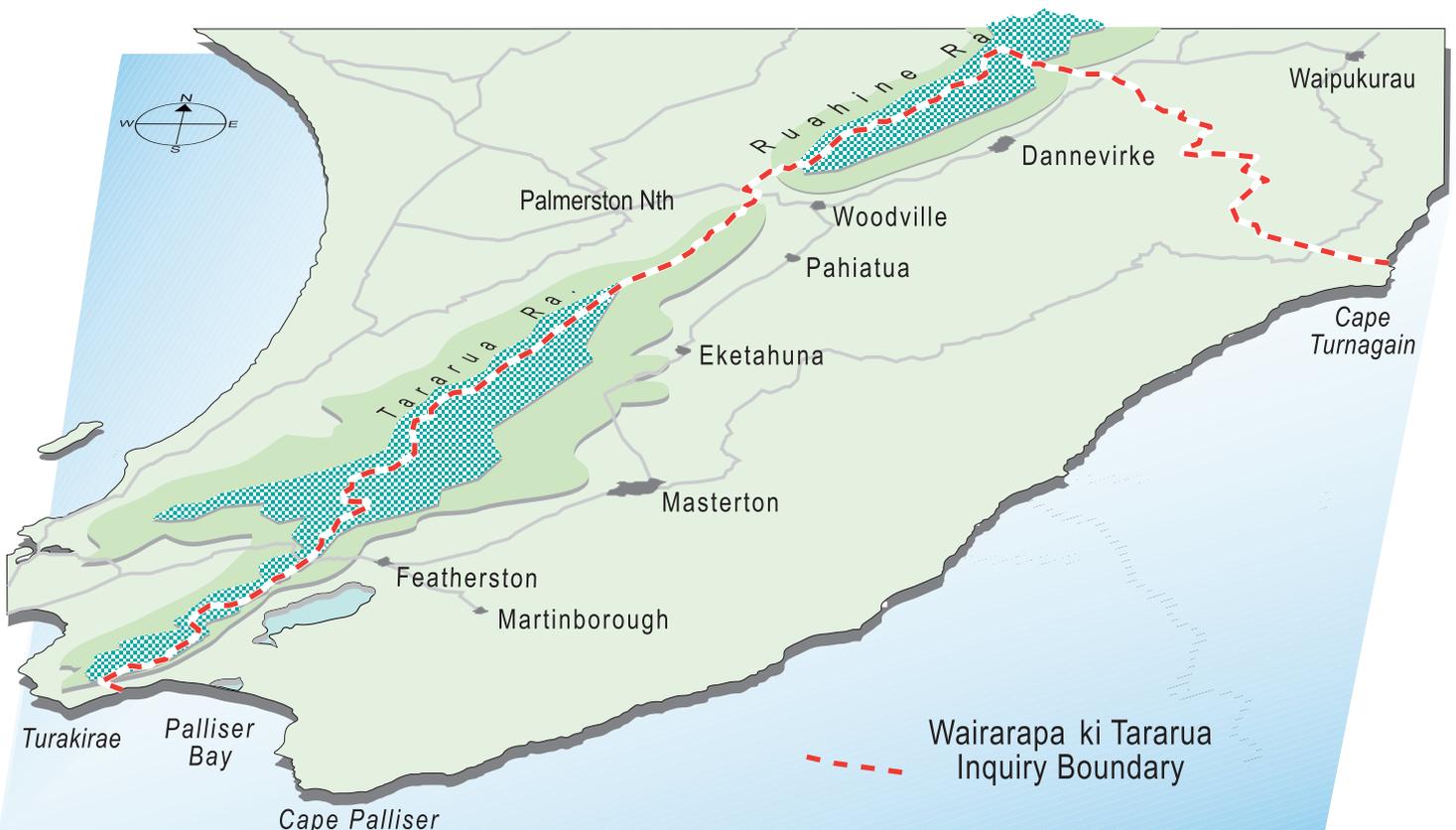
At marae and other public venues throughout the inquiry district, Tribunal members Judge Carrie Wainwright (presiding), Professor

Wharehuia Milroy, Dame Margaret Bazley and Professor Ranginui Walker, together with consulting historian Dr Robyn Anderson, will hear evidence and submissions from Ngāti Kahungunu, Rangitāne and other claimant groupings, and from the Crown. There will be nine weeks of hearings, to be completed in January 2005.



First Wairarapa ki Tararua Tribunal meeting in Masterton in March.

Photo courtesy Sandy Parkinson, Wairarapa Times-Age



Whanganui inquiry

The Whanganui district inquiry, presided over by Judge Carrie Wainwright, encompasses an area stretching from the mouth of the Whanganui River to Taumarunui in the north. Eight Tribunal staff and contracted researchers are currently preparing reports for the inquiry, together with Crown Forestry Rental Trust researchers and the claimants themselves. This makes Whanganui the Tribunal's biggest current commitment of research resources.

A completed casebook of research is due in the middle of 2004, and hearings are expected to begin in mid-2005, and to last about a year.

A number of very constructive exchanges have occurred between researchers and the Whanganui claimant community at hui in Whanganui, Taumarunui, Waiouru, Whakapapa Village and in Wellington over the last few months. "Both claimants and researchers almost always appreciate the opportunity to kōrero and exchange ideas," explains research facilitator James Mitchell. "To the researchers it brings a sense of engagement with the issues and an understanding of the real importance of our work. For the claimants, it is important to be able to meet and discuss with those people who have been entrusted with the task of writing the research reports."

Central North Island inquiry

Significant groups of claimants in the three Central North Island inquiries (Rotorua, Taupo and Kaingaroa) have recently shown a strong interest in moving into direct negotiations with the Crown. To assist those groups, while safeguarding the interests of claimants who are not yet ready to take that step, the Central North Island (CNI) Tribunal has reorganised the hearing of claims into two stages, with all three districts being progressed in parallel. The new process is described in this issue's editorial. The Crown, for its part, has agreed to the CNI claimants continuing in the Tribunal process, while at the same time embarking on their direct negotiation discussions.

Eileen Barrett-Whitehead, lead facilitator for the CNI inquiry, says "Claims scheduled to be heard, in full or in part, presently number around 150, making this one of the biggest undertakings the Tribunal has ever faced."

Documentary research on generic issues – big issues that *most affect most* claimants in the region – is now well underway, and the claimants are also gathering their evidence. The research casebook is due for completion by September this year. There will then be a short series of hearings, due to start in December and to run through the early part of next year, and the Tribunal will aim to report on the generic issues by the middle of 2005.

National Park inquiry

The region surrounding and including the mountains Ruapehu, Tongariro and Ngauruhoe is subject to claims by Whanganui claimants to the south and by Taupo claimants to the north. The claims are about the gifting of land for the National Park and the role of the Native Land Court and Crown purchase agents in obtaining subsequent land for the park, and also compulsory acquisitions of land for the park. Māori involvement in park management is also an issue.

In February this year, the National Park was declared an inquiry district in its own right, separate from the Whanganui and Taupo inquiries, in order to inquire into overlapping claims in the fairest manner possible. Joanne Morris has been appointed presiding officer for the National Park inquiry and will be assisted in conferencing by Tribunal member John Clarke. The lead facilitator for this inquiry is Mark Derby.

The timetable for the National Park inquiry will be synchronised with both the Central North Island and Whanganui inquiry programmes, to ensure that no claimants are compromised in their ability to have their claims heard and to enter direct negotiations with the Crown. ●

Ngā kānohi hōu – new Tribunal members and officers

The most recent conference of members of the Waitangi Tribunal, held in Wellington in November 2003, was especially notable for the new faces present. Three new members – Ranginui Walker, Hirini Moko Mead and Judith Binney – were welcomed, and these highly regarded academics will greatly strengthen the Tribunal's ability to fulfill its heavy programme of inquiries.



Professor Hirini Moko Mead

Sidney (Hirini) Moko Mead (Ngāti Awa) was founding Professor of Māori Studies at Victoria University, where he was responsible for building Te Herenga Waka, the first university-based marae on a mainstream campus. He later established a tribal university, Te Whare Wānanga o Awanuiārangi, at Whakatane. Professor Mead was chief negotiator for the Ngāti Awa Treaty claims, which are currently awaiting settlement legislation. He is the author of many books, including *Tikanga Maori: Living by Maori Values* (2003).



Dr Angela Ballara

Angela Ballara is an historian and authority on Māori customary history. Her PhD at Victoria University was on 'The Origins of Ngāti Kahungunu'. Dr Ballara spent 15 years as Editorial Officer (Māori) for the *Dictionary of New Zealand Biography*. She has also written several books, including *Iwi: The Dynamics of Maori Tribal Organisation c. 1769-1840* (1998) and *Taua: Warfare in Maori Society in the 19th Century* (2003). She is currently writing a 19th-century tribal landscape overview for the Waitangi Tribunal's Central North Island inquiry.

A further distinguished academic, Dr Angela Ballara, was appointed later to the Tribunal.



Professor Ranginui Walker, DCNZM

Ranginui Walker is a member of the Whakatōhea tribe of Opōtiki. He was educated at St Peter's Māori College, Auckland Teacher's College and the University of Auckland, where he completed his PhD in Anthropology. Dr Walker has been a longtime member of the New Zealand Māori Council and a foundation member of the World Council of Indigenous People. He is currently Pro Vice Chancellor (Māori) at the University of Auckland and is the author of several books, including *He Tipua: The Life and Times of Sir Apirana Ngata* (2001).



Professor Judith Binney, CNZM, FRSNZ

Professor Binney is Emeritus Professor of History at Auckland University. As an historian, she specialises in the history of Māori and European engagement in Aotearoa/New Zealand, and has produced several major publications in this area. Her biography of Te Kooti Arikirangi Te Turūki, *Redemption Songs*, won the Montana Book of the Year Award.

At the conference, Chief Judge Joe Williams acknowledged the work of departing members including Brian Corban, Areta Koopu, Dame Augusta Wallace and Professor Gordon Orr. Their contribution to past Tribunal inquiries is greatly appreciated, and their experience will be missed.

A further new face to appear at the conference was Kim Ngārimu, recently appointed as the Tribunal's Acting Director.



Kim Ngārimu

In late October 2003, Kim was appointed as Acting Director of the Waitangi Tribunal, pending appointment of a permanent Director. Kim is a company director and former public servant. She has wide ranging experience spanning 12 years in public policy development in the Māori affairs sector. Prior to joining the public service, Kim worked for her iwi authority, Te Rūnanga o Ngāti Porou.

Kim says her focus during her time with the Tribunal will be to build on the positive gains made by her predecessor, Neville Baker, in the relationships between Treaty sector agencies, and to nurture and build on the capability within the Tribunal's administrative unit to support the streamlined and more expeditious inquiry process that has evolved over recent years.

Since the members' conference, two familiar faces have been appointed to key positions at the head of the Waitangi Tribunal, Chief Judge Joe Williams as Chairperson and Judge Carrie Wainwright as Deputy Chairperson.



Chief Judge J V Williams

*Tēnā koutou
Tēnā koutou i ō tātou tini aitua
maha.
Kō tātou ēnei, ō rātou kānohi ora
Tēnā koutou katoa*

In January I formally accepted the challenge of the role of Chairperson of the Tribunal. I would like to recognise the considerable achievements and leadership of my predecessor, the Honourable Justice Edward Taihakurei Durie. As you will know, Justice Durie chaired the Tribunal since it was established in 1975. His calm guidance and wisdom has been a force for reconciliation between Māori and the Crown. In accepting this challenge, I am honoured to follow such a respected person, and look forward to building on the progress we have made over recent years.

2004 promises to be a busy and challenging year for the Tribunal. I would like to acknowledge the dedication of all our members and staff, and wish everyone well for the remainder of this challenging year.



Judge Carrie Wainwright

Working as a presiding officer in the Waitangi Tribunal is a very enjoyable part of my job as a Māori Land Court judge, and I take up the role of Deputy Chairperson with pleasure.

It is, of course, an honour to work closely with Chief Judge Williams, and it is our joint objective to continue to strengthen the Tribunal's role in resolving claims in a way that brings reconciliation to the parties. The Tribunal has been working hard to streamline its processes in order to save time and money, and to provide processes that are flexible to meet parties' changing needs. But we are conscious all the time that these improvements cannot be made at the expense of providing inquiries that work at a human level. ●

Northern South Island Inquiry concludes hearings

After four years of hearings, the Northern South Island (Te Tau Ihu) inquiry concluded with closing submissions in early March. The Tribunal – Deputy Chief Judge Wilson Isaac (presiding), Professor Keith Sorrenson, John Clarke (who replaced Roger Maaka on the panel in 2003), Rangitihī Tahupārae and Pam Ringwood – is now writing its report.

Eight iwi groups were involved in the inquiry – Ngāti Kuia, Ngāti Apa, Rangitāne, Ngāti Koata, Ngāti Rarua, Te Atiawa, Ngāti Tama and Ngāti Toa. There were also several specific or whānau claims, as well as a claim by the Wakatū Incorporation concerning the operation of the Nelson Tenth reserves. The neighbouring Ngāi Tahu had the status of an interested party in the inquiry and participated in two hearings and a number of judicial conferences.

The hearings began in August 2000. Iwi groups were heard in 2000 and early 2001 before litigation concerning the effect of Ngāi Tahu's settlement with the Crown in 1997 and their role in the Tribunal's proceedings interrupted the inquiry. At issue was essentially whether the Tribunal had jurisdiction to hear claims within the statutorily defined Ngāi Tahu takiwā. Once this matter had been resolved in favour of the Te Tau Ihu claimants, the Tribunal switched to a series of hearings on generic issues.



Northern South Island Tribunal member Professor Keith Sorrenson with Ngāti Kuia kaumatua Jim Walker at Te Hora Pa during the Ngāti Kuia hearing.

Photo: Paul Hamer



Waikawa Marae, venue for the Te Ati Awa hearing.

Photo: Paul Hamer

The Tribunal then listed the matters which remained contested between the Crown and the claimants, and therefore comprised the focus of the remaining iwi hearings. Those hearings were completed in July 2003 and were followed by hearings of the Wakatū Incorporation claim, various whānau claims, the Te Tau Ihu claims within the Ngāi Tahu statutory takiwā

and, in November 2003, the Crown's case.

The last day of the inquiry was also notable as Professor Sorrenson's last hearing day since his appointment to the Tribunal in 1986. His outstanding contribution to the Tribunal's work will conclude with the completion of the *Northern South Island Report*. ●



Te Manutukutuku is published by the Waitangi Tribunal, PO Box 5022, Wellington • Telephone 04 914 3000 • Fax 04 914 3001
ISSN 0114-717X • e-mail: tribunal@courts.co.nz • All *Te Manutukutuku* can be accessed from <http://www.waitangi-tribunal.govt.nz>
Production by Huia Communications, Wellington

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